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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,225	12/10/2003	Bradford J. Wood	4239-67125	8011

7590 10/04/2005

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EXAMINER

VRETTAKOS, PETER J

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/733,225

Applicant(s)

WOOD, BRADFORD J.

Examiner

Peter J. Vrettakos

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 30-72 is/are pending in the application.
- 4a) Of the above claim(s) 30-35, 40, 59-66 and 72 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 36-39, 41-58 and 67-71 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12-10-03</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

The species election of claims 40 and 72 are incorrect. Both claims are toward distinct species (saline electrode and plurality of ports, figures 3a and b) from that elected (figures 1 and 2a) and hence will not be examined.

Claims 30-72 are pending. Claims 36-58 and 67-72 were elected with traverse. Claims 36-39, 41-58, and 67-71 are examined.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 44-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

#### Re: claims 44-48

Claim 44 reads that the electrode comprises two coaxial sections "moving" independently of each other. Then, claims 47-48 read that the movable core, which is part of the second coaxial section, "moves" relative to the first coaxial section. To this end, how do two elements (first coaxial section and the second coaxial section) move both independently as well as relative to each other? The specification does not sufficiently reconcile this discrepancy.

#### Re: claims 49-50

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Claims 49 and 50 disclose a temporary lumen occluder, which is not sufficiently disclosed in the specification.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

- 1. Claims 36, 38, 39, 41-48, 51, 53, 56, and 67-71 are rejected under 35 U.S.C. 102(b) as being anticipated by Fleischman et al. (5,545,193).**

Fleischman discloses a tubular catheter with deployable shape memory (Nitinol-biodegradable) helical (146, figure 12b) coated (figure 14 analogous spline basket 166 made of polyethylene; col. 20:57-63) detachable (soldered; col. 12:60) electrodes with a pre-selected shape that is selectively adjustable (advanceable and rotatable) and with two coaxial sections (152,154, figure 12b), an RF source capable of 30 watts (col. 24:48), an end hole (at the end of element 48 in figure 12a), a movable core (central spline in basket 92(4) in figure 12b), a controller (300), a control lever (158, figure 12b)

for advancing the spline basket (92(4) includes electrodes) all for applying RF energy to the wall of an organ (heart).

**2. Claims 36-39, 41, 44-58, and 67-70 are rejected under 35 U.S.C. 102(e) as being anticipated by Tu et al. (6,036,689).**

Tu discloses a tubular catheter with deployable shape memory (Nitinol, patented claim 5 - biodegradable) (figure 4) coated electrodes with a pre-selected shape that is selectively adjustable (advanceable and rotatable – see double sided arrows in figure 4) and with two coaxial sections (first axis correspond to 4, the second axis adjacent to the double sided arrows in figure 4), an RF source (figure 1, 1), an end hole (61), a side hole (35), a movable core (central spline in basket in figure 4), a thermistor controller (10), a control lever (15,16,17) for advancing the spline basket all for applying RF energy to treat stenosis/atherosclerosis (see abstract).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter J. Vrettakos whose telephone number is 571-272-4775. The examiner can normally be reached on M-F 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pete Vrettakos  
October 3, 2005

*P*

*Roy D. Gibson*  
ROY D. GIBSON  
PRIMARY EXAMINER